

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

4 Plaintiff

5 v.

6 TRACEY BROWN,

7 Defendant

Case No.: 2:11-cr-00334-APG

**Order Denying Defendant's Motion for  
Leave**

[ECF Nos. 346, 349]

8 I previously denied defendant Tracy Brown's § 2255 petition, and his appeal of my  
9 decision is pending at the Ninth Circuit. *See* ECF Nos. 340-342. Brown now files two motions  
10 seeking leave to amend his § 2255 petition. He appears to argue that Amendment 798 altered the  
11 Career Offender Guideline (U.S.S.G. § 4B1.2), so he is entitled to a sentencing reduction under  
12 18 U.S.C. § 3582(c)(2). However, the Ninth Circuit has ruled that Amendment 798 does not  
13 apply retroactively. *United States v. Adkins*, 883 F.3d 1207, 1212 (9th Cir. 2018). Thus,  
14 Amendment 798 does not apply to Brown and his proposed amended petition would be futile.

15 I THEREFORE DENY the defendant's motions for leave to amend (ECF Nos. 346, 349).

16 DATED this 24th day of March, 2021.

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18 ANDREW P. GORDON  
19 UNITED STATES DISTRICT JUDGE  
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